

# **Enforcement Tools for Surveyors and the LTC Industry**

**Annual Surveyor Training  
November 19, 2009**



# Objectivity Defined:

“Not influenced by personal feelings, interpretations, or prejudice; based on facts; unbiased”

## The Essential Ingredient of:

- Investigations
- Decision Making

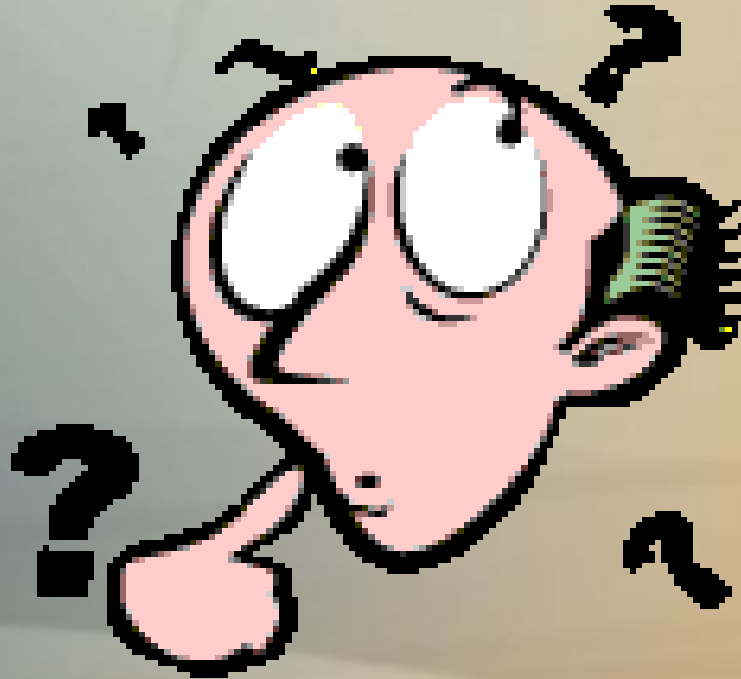
Without objectivity, accuracy is potentially compromised.

# Objectives

- **Enforcement questions from administrators**
- **Review and discuss elements of I/J – Class I**
- **Review I/J Elements of F314, F323 (Falls) and F309 (Pain)**
- **I/J Abatement Protocol**

# Objective #1

## Enforcement Questions from Administrators



# **“What (sanctions) can I expect as A result of this immediate jeopardy?”**

- Civil Monetary Penalty of \$10,000.00 + \$100 PD at the 40-60 day RV if not corrected
- 23 Day Termination (If not Abated)
- DPNA (If not Abated)
- Loss of ability to Train NAs for 2 years

Substandard Quality of Care

Denial of Payment for New Admissions

Civil Monetary penalty of \$5,000.00 or greater

Notice of Noncompliance

# **“What (sanctions) can I expect as a result of this survey (no I/J)?”**

- SLCR will recommend DPNA at the 3<sup>rd</sup> Calendar month if not in SC – except Double G
- DPNA – Not lifted until in SC
- CMS will terminate facility agreement if not in SC at the 6<sup>th</sup> Calendar month
- SLCR will publish Medicaid contract Termination, gather available bed and resident's special care needs from surrounding area, obtain the facility's plan for resident notification and alternative placement

# **“You said I was in compliance. When can I start admitting new residents?”**

- Compliance is a recommendation from SLCR
- CMS makes final determination of compliance and lifts the sanction via letter
- All new residents are admitted at the facility's risk until the CMS letter is in hand

# **“Will I get another revisit?”**

- CMS does not guarantee revisits
- First Revisit – Compliance determined by facility POC and allegation of compliance date
- Second Revisit – Compliance date determined by acceptable evidence, provided by the facility, that establishes correction prior to revisit date
- Third Revisit – Require approval of CMS. Compliance date determined by date of revisit
- POC from initial process, 1<sup>st</sup> and 2<sup>nd</sup> revisits subjected to CMS review in the approval process



# **“I received a letter from the AG’s office demanding I pay a penalty. What do I do?”**

- RSMo. 198.067 Guides CMP recommendations
- Class I - \$10,000.00 Per instance
- Uncorrected / Uncorrected Class II - \$250.00 per day / per tag
- Preponderance of the Evidence / Clear and Convincing Evidence
- Contact AG
- Collected Funds – 25% Elderly Home Delivered Meals Trust Fund; 25% Nursing Facility Quality of Care Fund (Ombudsman); 50% Nursing Facility Quality of Care Fund (DHSS)

## Objective #2

**Review and Discuss Key Elements of IJ - Class I**



# Immediate Jeopardy / Class I Defined

**Immediate Jeopardy** – A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. (42 CFR Part 489.3)

**Class I** – A violation which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. (RSMo. 198.085)

# Key Components

- **Harm**
- **Immediacy**
- **Culpability**

# Harm

- Actual Harm

- “Caused serious injury, harm, impairment, or death...”
- Occurred in the past or present – past noncompliance
- What evidence can we collect to establish actual harm that meets the definition of I/J?

- Potential Harm

- “Likely to cause serious injury, harm, impairment, or death...”
- What evidence can we collect to establish a potential for harm that meets the definition of I/J?

# Immediacy

- Likelihood of occurrence of I/J if corrective action is not taken
- Consider what sense of urgency is needed in correction measures
- Evidence which shows failures in facility systems that have / will lead to failure
- What evidence can we collect to establish a need to act / intervene with a sense of urgency?

# Culpability

- Facility vs. Individual
- Evidence establishes:
  - Facility knowledge of failure
  - When facility became aware
  - How facility became aware
  - Complete investigation / outcome
  - Implement corrective measures
  - IF NOT- should they have known and HOW
  - That the circumstances were predictable
- What evidence can we collect to establish facility culpability?

# Objective #3

**Components of Level 4 Deficiencies at F314  
F323 (Falls) and F309 (Pain)**





# **F314 Pressure Sores Severity Level 4 Examples**

- Development of avoidable Stage IV Pressure Sores
- Admitted with Stage IV Pressure Sores that show no signs of healing or signs of deterioration
- Stage III or Stage IV Pressure Sores with associated soft tissue or systemic infection
- Extensive failure in multiple areas of Pressure Sore care

# **F323 Accidents (Falls)**

## **Severity Level 4 Examples**

- Falls that resulted or had the potential to result in serious injury, impairment, harm or death *and* the facility had no established measure or practice (or ineffective) to prevent the fall or limit injury
- Loss of consciousness related to head injury
- Fracture or other injury that may require surgical intervention and results in a significant decline in mental / physical functioning

# **F309 (Pain)**

## **Severity Level 4 Examples**

- Resident experiences continuous, unrelenting, excruciating pain or incapacitating distress because of the Facility's failure to: recognize / address the pain *OR* develop, implement, monitor, or modify a pain management plan to meet the needs of the Resident

# **F309 (Pain)**

## **Severity Level 4 Examples, cont.**

- Resident experiences recurring, episodic excruciating pain or incapacitating distress related to specific situations where pain could be anticipated and the Facility failed to attempt pain management strategies to try to minimize the pain

# Objective #4

## I/J Abatement Protocol

### Implementation:

- September 15, 2009

### Primary Purpose:

- Reduction of 3<sup>rd</sup> revisits in enforcement cycle
- Consistency between States in CMS Region 7

### Supervisory focus:

- Plan of Correction – establish abatement on site

# Protocol

- Applicable to Certified and State Licensed facilities
- Region still makes contact with S&C to establish I/J – Class I components (No change)
- Once POC received – make contact with S&C to establish abatement (LOWERING) of citation (initial CMS involvement)
- SOD Protocol (J/D) remains the same (S&C reviews) – Insert lowering blurb (SOD mailed from CO with NNC & sanctions)

# Protocol cont.

- Not every I/J – Class I will be abated – POC
- Do not dictate corrective measures
- Remains a “J” on NH Compare and SOD

# Minimum POC for Abatement

Will Identify:

- What corrective action(s) will be accomplished for residents affected by the deficient practice
- How the facility will identify other residents having the potential to be affected by the same deficient practice & what corrective action will be accomplished for those residents
- How the facility will implement monitoring of affected residents and similarly situated residents on an ongoing basis – starting NOW until full correction can be made



# **CMS Review**

## **POC Recurring Themes**

- Address Systemic Issues
  - Staff Training and In-services prior to returning to work
  - Staffing levels
  - Assessments for skin (F314) and elopements (F323)

# Questions?

